UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

LARO SERVICE SYSTEMS, INC.
Employer

and

Case No. 29-RC-10392

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL, IMPLEMENT WORKERS OF AMERICA, REGION 9A, AFL-CIO
Petitioner 1

and

LOCAL 713, INTERNATIONAL BROTHERHOOD OF TRADE UNIONS (IBOTU), INTERNATIONAL UNION OF JOURNEYMEN AND ALLIED TRADES
Intervenor2

DECISION AND DIRECTION OF ELECTION

The Employer (Laro Service Systems, Inc.) provides cleaning services at various locations, including LaGuardia Airport in Flushing, New York. The Petitioner (International Union, United Automobile, Aerospace, Agricultural, Implement Workers of America, Region 9A, AFL-CIO) filed a petition on June 2, 2005, under Section 9(c) of the National Labor Relations Act seeking to represent unit of approximately 40 cleaners employed by the Employer at the U.S. Airways Terminal at LaGuardia. The Intervenor

1 The Petitioner's name appears as amended at the hearing.

2 The above-named labor organization intervened in this proceeding based on its collective bargaining agreement with the Employer.

(Local 713, International Brotherhood of Trade Unions, International Union of Journeymen and Allied Trades) is the recognized collective-bargaining representative of the same unit. Both the Employer and the Intervenor contend that their 2004 – 2007 collective bargaining agreement bars an election at this time. However, the Petitioner contends that the contract cannot serve as a bar due to non-enforcement. An issue also arose as to whether the contract's union security provision removes its bar quality. A hearing was held before Marcia Adams, a hearing officer of the National Labor Relations Board.

In support of its position on the contract bar issue, the Petitioner called three employee-witnesses to testify: Andrea Polanco, Maria Vargas and Franklin Garcia. The Employer called its administrative manager for payroll and benefits, Eugene Gasparro, to testify. The Hearing Officer also called on the Intervenor's secretary-treasurer, Robert Scalza, to testify.

As discussed in more detail below, I reject the Petitioner'.s contention that non enforcement of the 2004 – 2007 contract removes its bar quality. However, I find that its union security clause, coupled with an unclear execution date, prevents the contract from barring an election. Accordingly, I will direct an election below in the relevant unit.

Facts

It is undisputed that cleaning employees at the U.S. Airway Terminal at LaGuardia Airport were previously employed by a company called One Source. They were represented by the Intervenor at that time. The last contract between One Source

and the Intervenor was in effect from 1999 to 2002 (Er. Ex. 1 *V* According to the Intervenor's secretary-treasurer, Robert Scalza, the contract automatically renewed thereafter. There seems to be no dispute that the Employer herein (Laro Service Systems, Inc.) became a successor employer after it took over One Source's cleaning contract with U.S. Airways in June 2004; that it hired the majority of One Source cleaning employees in its new employee complement there; and that it recognized the Intervenor as the collective-bargaining representative of those employees.

Scalza testified that negotiations for a contract between the Intervenor and Laro took place in approximately July 2004.4 Both Scalza and the Intervenor president, Peter Hasho, communicated with the Employer's attorney, Clifford Chaiet, by telephone and fax. Scalza testified that he also met in person one time at the Employer's office in Bay Shore with Steve Davison (Laro's chief financial officer) and Robert Vetter (title not specified in the record), as well as attorney Chaiet. On July 15, Scalza also sent a fax to Chaiet, regarding health and welfare fund payments for former One Source employees who were now employed by Laro (Er. Ex. 3). Scalza remembered neither the exact date when negotiations were concluded, nor when the 2004 - 2007 contract with Laro was executed.

The cover page of contract itself (Int.. Ex. 1) does not indicate when it went into effect, because a space for the date was left blank ("This agreement made and entered into this date of August, 2004"). The contract does not contain an effective date, but only a

3 References to the record are abbreviated herein as follows: "Er. Ex. #" and "Int. Ex. #" refer to Employer and Intervenor exhibit numbers, respectively.

4 All dates hereinafter are in 2004, unless otherwise indicated.

termination date in Article XVII ("This agreement shall continue until July 30,2007"). Furthermore, the signature page (see Attachment A) does not clearly indicate when the contract was executed. The signature of Intervenor president Hasho does not have any date whatsoever, and the signature of CFO Davidson has a somewhat indecipherable date underneath (perhaps "8/4/04" or "8/6/04").

Among other provisions, the contract provides for holiday pay, vacation leave (one week after a year of employment), and bereavement leave. It requires the Employer to make certain payments to the IBOTU Health and Welfare Fund, starting on August 1, 2004. The contract provides no wage increase for the first year, but requires a "re opener" to discuss wages and health benefits for the second and third years of the contract. Under the contract, the Employer must also provide any necessary uniforms, without any charge to the employees.

The contract's union security clause (Article II) reads in part:

> All present employees and those hired in the future for all work covered by the terms and conditions of this agreement shall, on the 31 st day following the beginning of their employment or signing of this agreement, whichever is later, shall as a condition of employment become and remain a member of the Union (emphasis added).

Scalza testified that the Intervenor has not sought to enforce the union security clause for now, at least until employees receive a wage increase. There is no dispute that the Intervenor does not possess dues-checkoff authorization cards signed by the Laro employees, and that Laro has not been deducting dues from employees' paychecks. Laro's administrative manager for payroll and benefits, Eugene Gasparro, testified that Laro has made health and welfare fund payments, as required under the contract, since August 2004. Gasparro also testified that employees receive holiday pay to which

they are entitled under the contract.

The Petitioner's employee-witnesses (Andrea Polanco, Maria Vargas and Franklin Garcia) testified that they did not know they were represented by the Intervenor, never received a copy of the contract, and never received any health benefits. It is undisputed that this bargaining unit does not have a shop steward.

Polanco testified that, when her brother died in November 2004 and she had to go home to Santo Domingo, no one told her that she was entitled to bereavement pay and she did not receive any. Polanco testified initially that she did not receive holiday pay except for Memorial Day 2005. However, on cross examination, the Employer submitted payroll records to show that Polanco had received holiday pay for Labor Day 2004, Christmas 2004, and New Year's Day 2005. (She was in Santo Domingo during Thanksgiving 2004.) Polanco also conceded on cross-examination that the Employer provided her a uniform, and that a supervisor told her she would get one week of paid vacation after one year of employment.

Vargas works as a cleaner at the U.S. Airways terminal "club." She testified that Laro initially gave her a white shirt with the company name on it. However, after the "club" manager told her to get a plain white shirt, black pants and a black vest, she bought those items in early 2005 and submitted receipts for reimbursement. Laro has not reimbursed her for those items. Vargas conceded during cross-examination that a supervisor told her about the one week vacation, that she in fact took one week of vacation, and that she was also paid for various holidays since Laro took over.

Discussion

In establishing the contract bar doctrine, the Board has attempted to strike a

balance between preserving employees' right to freely choose their representative, and preserving some stability in the parties' collective bargaining relationship. This doctrine provides that when the contracting parties have executed a collective-bargaining agreement, they are entitled to a reasonable period of stability in their relationship without interruption. General Cable Corp., 139 NLRB 1123 (1962). Employees who are covered by an existing contract of up to three years duration, but who wish to change or eliminate their bargaining representative, must wait until the specified "open period" to file their petition. .Leonard Wholesale Meats, 136 NLRB 1000 (1962). However, a contract containing an unlawful union security provision does not bar an election at any time.

Paragon Products Corp., 134 NLRB 662 (1962).

The Board has found that a collective bargaining agreement may bar an election, even when some provisions have not been enforced. In Visitainer Corp., 237 NLRB 257 (1978), the employer complied with some provisions (paid holidays, vacations) but failed to comply with others (discrepancy in the wage rates, no night-shift differential). Under those circumstances, the Board concluded: "We are unable to find that the contract has been abandoned or that the actual wages, hours and working conditions at the plant are so at variance with the contract terms as to remove the bar quality." Id.

In the instant case, the Petitioner's evidence does not show that the Intervenor and Employer have "abandoned" the contract. To the contrary, the record indicates that the Employer and Intervenor negotiated the contract in approximately July 2004, and that the Employer has made contractually-required health fund payments since then. The Employer has also given employees paid holidays and vacations, and provided at least some uniforms. The fact that employees have not received bereavement pay, or that the Employer did not reimburse an employee for a different uniform required by the "club"

does not negate the contract's bar quality. I therefore reject the Petitioner's contention regarding non-enforcement.

Nevertheless, I find the 2004 – 2007 contract in question cannot bar an election for another reason. Specifically, as described above, the union security clause is tied to the "signing" date of the contract, but it is not clear when the contract was actually signed. There is no date whatsoever near the union president's signature, and an indecipherable date under the employer's signature. Further, the the Intervenor's representative testified that he could not recall when the contract was executed. Thus, it is not clear to employees when the 30-day grace period, to which they entitled under the proviso to Section 8(a)(3) of the Act, actually commenced. Any contract that fails to grant the required 30-day grace period cannot bar an election. Standard Molding Corp., 137 NLRB 1515 (1962). Nor could parol evidence be used to establish the signing date (e.g., testimony by signatories Davidson and Hasho), because the commencement of the 30-day grace period must be apparent from the face of the contract. Jet-Pak Corporation, 231 NLRB 552 (1977). In a recent analogous case, South Mountain Healthcare and Rehabilitation Center, 344 NLRB No. 40 (March 18,2005), the Board found that a four-year "memorandum of agreement" without an effective date could not bar an election because employees could not determine the appropriate time to file a representation petition. The Board noted that unless the effective date is "apparent from the face of the contract, without resort to parol evidence, the contract will not serve as a bar," Id., slip op. at p.2. Here, since the contract's execution date is not apparent, the employees had no way to determine when their 30-day grace period would start.

Accordingly, I find that the 2004 -2007 contract between the Employer and the Intervenor does not constitute a bar, and I will direct an election below in the relevant

bargaining unit.

CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, including the parties' stipulations and in accordance with the discussion above, I conclude and find as follow:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that Laro Service Systems, Inc., is a domestic corporation, with its principal office and place of business located at 271 Skip Lane, Bay Shore, New York. It is engaged in providing cleaning services at various locations throughout the United States, including LaGuardia Airport in Flushing, New York. During the past year, which period is representative of its annual operations generally, the Employer purchased and received goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of New York.

Based on the parties' stipulation, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I hereby find, that the Petitioner and the Intervenor are both labor organizations within the meaning of Section 2(5) of the Act, and they claim to represent certain employees of the Employer.

4. As discussed above, I have found that the 2004 – 2007 collective bargaining agreement between the Employer and the Intervenor does not bar an election. Therefore, a question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I hereby find, that following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time cleaners, window cleaners, project workers and lead persons employed by the Employer at the U.S. Airways Terminal at LaGuardia Airport in Flushing, New York, but excluding all confidential employees, managerial employees, guards and supervisors5 as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have

5 The parties stipulated that the following individuals are excluded from the unit as supervisors: Robert Vetter, Jr., Juan Toro, Ana Ubilla, Juan Soto and Enrique Himosa.

not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by the International Union, United Automobile, Aerospace, Agricultural, Implement Workers of America, Region 9A, AFL-CIO, or by Local 713, International Brotherhood of Trade Unions, International Union of Journeymen and Allied Trades, or by neither labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. ExcelsiorUnderwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon

Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before August 11, 2005. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by August 18, 2005.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.com.

Dated: August 4, 2005.

s/sDavid Pollack
Acting Regional Director, Region 29
National Labor Relations Board
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